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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO.  |
|---|-------------|----------------------|---------------------|-------------------|
| 10/673,161  | 09/30/2003  | Kurt A. Dobbins      | 0016.0025US1        | 9818              |
| 29127   | 7590        | 12/08/2009           | EXAMINER            |                   |
| HOUSTON ELISEEVA<br>4 MILITIA DRIVE, SUITE 4<br>LEXINGTON, MA 02421 |             |                      |                     | DONAGHUE, LARRY D |
| ART UNIT  |             | PAPER NUMBER         |                     |                   |
| 2454  |             |                      |                     |                   |
| MAIL DATE   |             | DELIVERY MODE        |                     |                   |
| 12/08/2009  |             | PAPER                |                     |                   |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/673,161             | DOBBINS, KURT A.    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Larry Donaghue         | 2454                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 September 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6 and 8-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6, and 8-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

1. Claims 1-6 and 8-27 are presented for examination.
2. Claims 1-6, 8-14 and 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moskowitz (US 20030200439) in view of Tarnoff (US 20020161680).

Regarding claims 1, 19 and 25, Moskowitz discloses:

A method of according preferred transport to a content file, the method comprising:

providing a content aware node, the node being contained in a transmission path of the content file; ([0012] "a network receiver to receive a packet" (the second sentence of the paragraph, see also claims 16 and 17)

identifying at the content aware node any portion of the content file to be transmitted; ([0012] the network receiver identifies if there is a watermark in the packet, which identifies the content which is being transported by the packet)

determining transport parameters at the content aware node based on the identified content file for transmission; ([0011] discloses authenticating the watermark (i.e. determining authentication of the watermark, also [0013] discloses a bandwidth rights certificate)

transmitting the at least part of identified content for transmission based on the determined transport parameters; and providing the identified content for transmission to a user requested location. ([0011] (at

the top of page 3) in the event that the analysis does not authenticate the packet the invention may: i) halt the transmission of the data; ii) modify the data being transmitted to degrade the quality, and/or iv) delay the transmission)

wherein the content tag designates a content class ([0013]) discloses priority data)

wherein identifying the content file for transmission includes: reading a content tag. ([0044] discloses reading the watermark)

generating consumption activity reports [0019, particular beginning at the last two lines 1<sup>st</sup> col. till end] in response to the designated type of the content file by the content tag of the content file {0022, “analyzed based on what the data is”].

Moskowitz discloses all the limitations of claims 1, 19 and 25 except for the watermark including a type of the content file.

The general concept of including the type of a content file in a watermark is well known in the art as taught by Tarnoff (see [0191]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Moskowitz with the general concept of including the type of a content file in a watermark as taught by Tarnoff in

order to allow additional filtering, blocking or enhancements to the content.

(Tarnoff, abstract)

Regarding **claims 2-6, 8-14, and 17-18**, Moskowitz discloses:

2. The method according to claim 1, wherein the content is electronic data.

([0011-0012] the information being transmitted in packets is electronic data)

3. The method according to claim 1, wherein the content is media content.

([0106] discloses image or audio files)

4. The method according to claim 1, wherein the content aware node is selected from a group consisting of an application specific node, a client node, a server node, and a network communication node. ([0012] discloses a network communication node)

5. The method according to claim 1, wherein transmitting at least part of the content includes: transmitting the content with the determined transport parameters over a peer- to-peer network. ([0008] discloses peer-to-peer networks)

6. The method according to claim 1, wherein identifying the content for transmission enables control on distribution of the content by at least one selected from a group consisting of an owner of the content, a peer-to-peer network, and a service provider. ([0016] discloses a service provider controlling the bandwidth of a purchased item)

8. The method according to claim 7, wherein reading the content tag includes reading: a multi-element content tag. (see [0036]-[0042] as well as [0031])

9. The method according to claim 1, wherein the determined transport parameters include at least one selected from a group consisting of a predetermined amount of bandwidth, a quality of service, a transmission attribute, an amount of packet loss, and an amount of jitter. ([0013], [0015], and [0016] all disclose bandwidth as being determined by the watermark, additionally [0011] discloses delay and changes in the quality of data)

10. The method according to claim 9, wherein the determined transport parameter is a predetermined amount of bandwidth. ([0013], [0015], and [0016] all disclose bandwidth as being determined by the watermark, additionally [0011] discloses delay and changes in the quality of data)

**11.** The method according to claim 1, identifying the content file for transmission occurs at the time an application is accessed. ([0012] discloses that the watermarks are identified at the time that the processor for identifying watermarks is accessed (i.e. an application for identifying watermarks))

12. The method according to claim 1, further comprising transmitting unidentified content based on transport parameters different from the

determined transport parameters. ([0011] discloses transporting unidentified content differently than properly identified content.)

13. The method according to claim 13, wherein the different parameters comprise a lower level of transport service. ([0011] discloses transporting unidentified content differently than properly identified content.)

14. The method according to claim 1, further comprising: authenticating the distribution allowed for the content, and authorizing only the allowed distribution for the content. ([0045] discloses checking that the content is authentic)

17. The method according to claim 1, wherein the user requested location is a device. ([0044] discloses at least sending the content to another router, if not sending it to a final destination)

18. The method according to claim 17, wherein the device is one selected from a group consisting of personal computer, a minicomputer, a microcomputer, a mainframe computer, a personal digital assistant, a hand-held device, a set-top box, a cellular telephone, an IP telephone, a videophone, a videogame machine, a television, and a personal video recorder. ([0007] discloses napster, which is used to send content from a PC to a PC)

Regarding **claims 19-25**, Moskowitz discloses:

**Claims 19 and 25** are substantially the same as claim 1, therefore the grounds of rejection for claim 1 stated above apply.

20. The method of claim 19, wherein identifying the content occurs at the time an application is accessed. ([0012] discloses that the watermarks are identified at the time that the processor for identifying watermarks is accessed (i.e. an application for identifying watermarks))
21. The method according to claim 19, wherein transmitting the identified content file for transmission includes: transmitting the content file over a network in which clients and servers are distributed such that an owner of the content file does not own the server element on which the content file is stored. ([0044], it is clear that the transmitter of the data does not own the routers which the data is transmitted over, nor does the transmitter own the destination of the content.)
22. The method according to claim 19, further comprising: authenticating the distribution allowed for the content, and authorizing only the allowed distribution for the content. ([0011] discloses halting the distribution of unauthenticated content)
23. The method according to claim 19, wherein the user requested location is a device. ([0044] discloses at least sending the content to another router, if not sending it to a final destination)
24. The method according to claim 23, wherein the device is one selected from a group consisting of personal computer, a minicomputer, a microcomputer, a mainframe computer, a personal digital assistant, a hand-held device, a set-top box, a cellular telephone, an IP telephone, a

videophone, a videogame machine, a television, and a personal video recorder. ([0007] discloses napster, which is used to send content from a PC to a PC)

3. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moskowitz and Tarnoff as applied to claims 1 and 14 above, and further in view of Jennings et al. (US 2002/0099842), hereafter Jennings.

Regarding claim 16, Moskowitz discloses:

wherein generating the flow information for the content further comprises: retrieving a transport profile corresponding to the content tag from at least one selected from a group consisting of an external database, a look up table, and a Uniform Resource Locator (URL) serving agent. ([0045] discloses comparing the watermark with a table of known watermarks to determine the authenticity of the watermark, therefore deciding whether to transport the data or not.)

Moskowitz and Tarnoff teach all the limitations of claims 16 and 19 except for including geographic restrictions.

The general concept of using geographic restrictions to limit content distribution is well known in the art as taught by Jennings. (See [0137]-[0139])

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Moskowitz and Tarnoff with the general concept of using geographic restrictions to limit content distribution as taught by Jennings in

order to enable the content owner to control who views its content with more granularity. (Jennings [0039]).

Applicant's arguments filed 09/08/2009 have been fully considered but they are not persuasive. Applicant argues in substance that the reference fails to teach generating consumption activity reports in response to the designated type of the content file by the content tag of the content file.

.Examiner disagrees as Moskowitz taught generating reports [0019] and performing this on type of content [0022].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Larry Donaghue whose telephone number is (571)272-3962. The examiner can normally be reached on Monday-Friday 9:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Larry Donaghue/  
Primary Examiner, Art Unit 2454